

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

ROBERT RUSSELL SPENCE,)	
)	2:12cv1077
Plaintiff,)	Electronic Filing
)	
v.)	Judge David Stewart Cercone
)	Magistrate Judge Lisa Pupo Lenihan
LOUIS CAPUTO, ESQ., <i>et al.</i> ,)	
)	
Defendants.)	ECF Nos. 11 & 12
)	
)	
)	

MEMORANDUM ORDER

This civil rights action was received by the Clerk of Court on July 31, 2012, without the filing fee or a request for leave to proceed *in forma pauperis*. Subsequently, Plaintiff filed a motion for leave to proceed *in forma pauperis* and after submitting the required supporting documentation, said motion was granted. Thereafter, the Complaint (ECF No. 9) was filed on September 20, 2012. The case was referred to United States Magistrate Judge Lisa Pupo Lenihan for pretrial proceedings in accordance with the Magistrate Judges Act, 28 U.S.C. §636(b)(1), and Local Rules of Court 72.C and 72.D.

Prior to service of the Complaint, the magistrate judge conducted a review of the allegations contained therein, in accordance with the directives in 28 U.S.C. §1915(e). While this review was ongoing, Plaintiff filed a Motion for Service by U.S. Marshal of his Complaint (ECF No. 11). Thereafter, the magistrate judge issued her Report and

Recommendation (ECF No. 12) on December 11, 2014, recommending that the Complaint (ECF No. 9) be dismissed with prejudice under 28 U.S.C. § 1915(e)(2)(B), as both frivolous and for failure to state a claim upon which relief may be granted. Specifically, the magistrate judge recommended that Plaintiff's claims under 42 U.S.C. §§1981, 1982, 1983, 1985, and 2000c-5, and the constitutional claims for alleged violations of the First, Fourth, Fifth, Sixth, Eighth, Ninth, and Fourteenth Amendments be dismissed with prejudice. The magistrate judge further recommended that Plaintiff's state law claims be dismissed without prejudice so that he may pursue those claims in the appropriate court of common pleas if he so desires. Finally, in light of the above recommendations, the magistrate judge recommended that Plaintiff's Motion for Service by U.S. Marshal of the Complaint (ECF No. 11) be denied as moot.

Service of the Report and Recommendation was made on Plaintiff at the Northeast Ohio Correctional Center, 2240 Hubbard Road, Youngstown, OH 44505. Plaintiff was informed that in accordance with the Magistrate Judges Act, 28 U.S.C. § 636(b)(1)(B) and (C), and Rule 72.D.2 of the Local Rules of Court, that he had fourteen (14) days to file any objections. Plaintiff timely requested an extension of time to file objections to the Report and Recommendation, which the Court granted and extended the deadline for filing objections to February 10, 2015. As of the date of this Memorandum Order, Plaintiff has not filed any objections to the Report and Recommendation.

After review of the pleadings and documents in the case, together with the Report and Recommendation, the following Order is entered:

AND NOW, this ⁷12 day of February, 2015,

IT IS HEREBY ORDERED that the Plaintiff's claims under 42 U.S.C. §§1981, 1982, 1983, 1985, and 2000c-5, and the constitutional claims for alleged violations of the First, Fourth, Fifth, Sixth, Eighth, Ninth, and Fourteenth Amendments are **DISMISSED WITH PREJUDICE** under 28 U.S.C. §1915(e)(2)(B), as both frivolous and for failure to state a claim upon which relief can be granted.

IT IS FURTHER ORDERED Plaintiff's state law claims are **DISMISSED WITHOUT PREJUDICE** so that he may pursue those claims in the appropriate court of common pleas if he so desires.

IT IS FURTHER ORDERED that Plaintiff's Motion for Service by U.S. Marshal of the Complaint (ECF No. 11) is **DENIED AS MOOT**.

IT IS FURTHER ORDERED that the Report and Recommendation (ECF No. 12) of Magistrate Judge Lenihan, dated December 11, 2014, is adopted as the opinion of the Court.



DAVID STEWART CERONE
United States District Judge

cc: Robert Russell Spence, Jr.
#31366068
Northeast Ohio Correctional Center
2240 Hubbard Road
Youngstown, OH 44505
Via First Class, U.S. Mail